

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY Caption in Compliance with D.N.J. LBR 9004-2(c) Joseph A. Diorio, Esquire 120 N. Bethlehem Pike B-309 Fort Washington, PA 19034 (215) 317-8725 Attorney for Debtor	
In Re: RICHARD BUSCAVAGE KATRIN BUSCAVAGE	Case No.: -10-39636(MBK) Adv. No.: Hearing Date: Judge: Kaplan

DEBTOR’S MOTION FOR AN ORDER (i) HOLDING CREDITOR YOUNGER AND SON, INC. IN CONTEMPT OF THE AUTOMATIC STAY, (ii) AWARDING ACTUAL AND PUNITIVE DAMAGES and (iii) AWARDING REASONABLE COUNSEL FEES AND COSTS

Richard and Katrin Buscavage (“Debtors”) by and through its counsel, Joseph A. Diorio, Esquire, hereby presents this Motion for the entry of an order, under 11 U.S.C. Section 362 et. seq, (i) Holding Creditor YOUNGER AND SON, INC. in contempt of the Automatic Stay, (ii) awarding actual and punitive damages and (iii) award reasonable counsel fees and costs for the necessity of filing the instant Motion

In support of this Motion, the Debtor, through counsel, respectfully represent:

1. A voluntary Petition under Chapter 7 of the United States Bankruptcy Code was filed by the Debtor on September 25, 2010.
2. This Honorable Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. Sections 157 and 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. Section 157(b). Venue of this case is proper in this district pursuant to 28 U.S.C. Section 1408 and 1409.

3. Debtors filed a Petition, Schedules and Statement of Affair along with a matrix of creditors. Debtors along with counsel appeared at the Section 341(a) Meeting of Creditors.

No creditors attended.

4. Prior to the filing of the Petition, Debtors owned and operated a flower shop under the trade name of “Fiddleheads, L.L.C.”

5. Upon information, knowledge and belief, Fiddleheads purchased flowers from respondent Younger and Son and debtors

6. Debtors listed and scheduled a guarantee obligation to Respondent on page 4 of Schedule F in the amount of \$19,518.26.

7. On Schedule F, Debtors listed respondent’s address as “595 Maple Avenue, Lansdale, PA 19446. (Schedule F attached as Exhibit A.)

8. Upon information, knowledge and belief, Notice of the Commencement of the case was not returned to the Court or to counsel for the Debtor.

9. On December 1, 2010, Respondent filed an action in the Superior Court of New Jersey, Somerset County, Law Division at case number L-2034-10 captioned “Younger and Son., Inc. v. Fiddleheads and Katrin Buscavage and Richard J. Buscavage.”

10. The lawsuit was served on Debtors on December 19, 2010.

11. The lawsuit indicates that the business address of respondent is “595 Maple Avenue, Lansdale, PA 19446”. (State Court action attached as Exhibit B.)

12. Debtors believes and therefore avers that respondent had actual knowledge of the commencement of the case and the imposition of the automatic stay and despite this knowledge commenced the above described state action in violation and contempt of the automatic stay.

BASIS FOR RELIEF

13. Creditor had actual knowledge of the bankruptcy filing.

14. In the alternative, Creditor had reason to stop and investigate whether a case was pending prior to filing the state court action.

15. As a direct and proximate cause of the actions of the Creditor/Respondent, Debtors have been damaged.

16. Creditor is in direct and willful contempt of the automatic stay.

WHEREFORE, Debtors respectfully request that this Honorable Court enter an Order holding the respondent Younger and Son, Inc. in direct and willful contempt of the automatic stay, award actual and punitive damages, reasonable counsel fees, costs and all other such relief as this Honorable Court deems just and proper.

Respectfully submitted,

DATE: December 20, 2010

/S/ JOSEPH A. DIORIO

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